IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.782 OF 2006

Mushtaq Jalebkhan Mev ...Applicant

Versus

State of Maharashtra ...Respondent

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Ms.Pooja Bhojane for Applicant.

Mr.R.Y.Mirza, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

MARCH 21, 2006.

P.C.

1. Heard Counsel for the parties. This is second bail application by the present Applicant/accused No.3.

2. Essentially, this application for bail is moved relying on the orders passed in cases of co-accused who have been released on bail. In one of the recent orders passed by this Court on February 8, 2006, co-accused Arshad Nathukho Mev

has been released on bail by this Court. Emphasis is placed on the said order to contend that the Applicant is similarly placed with the said accused.

3. It is not possible to accept this submission. There is substance in the argument canvassed by learned A.P.P. that the Applicant has been identified by the driver as one of the dacoits. Indeed, accused Arshad's name is also seen along with the Applicant herein. But the said accused has not been identified by any witness. It is for that reason, this Court has observed that the said accused was arrested on suspicion. Insofar as present Applicant is concerned, as mentioned earlier, he has been identified by the driver of the truck. In my order dated February 8, 2005, the role of the Applicant has been wrongly stated as cleaner of the concerned truck. Indeed, that is a mistake committed in the order dated February 8, 2005 passed by me. But as the matter is brought before this Court for the second time by the present Applicant, I have to examine all the aspects of the matter and on ascertaining the

correct facts from the record, it transpires that the role of the Applicant herein/accused No.3 is that he had intercepted the truck along with other accused and after the driver and cleaner were administered the stupefying drug and became unconscious, the Applicant was responsible to take away the truck along with other accused. Insofar as the Applicant is concerned, he has been identified by the truck driver unlike the case of Arshad Mev, where he has not been identified by any witness. The offence in question is a serious offence. Besides, the material on record would indicate that the Applicant caused to identify persons to whom goods were delivered after the truck was taken away. The said person in turn has passed on the goods to other accused and the chain of persons involved has been identified. The goods have been recovered from the concerned person who received the same at the end. In that sense, it is not possible to accept grievance of the Applicant that the case of the Applicant and that of the accused Arshad Mev is similarly placed. Order of bail passed in favour of accused Arshad Mev will therefore be of no avail to the Applicant herein.

There is no other changed circumstance, which is pressed into service before me.

4. That takes me to the second grievance of the Applicant that inspite of the direction to the Trial Court to assign the case to Fast Track Court for early disposal of the trial, no progress has been made before the Trial Court. This submission clearly overlooks the fact situation on hand. It is seen that out of total 17 accused, only 8 came to be arrested. In other words, 9 accused are still absconding. Nevertheless investigation has been completed in respect of the arrested accused and charge-sheet has been filed. Thereafter, the case has been committed to the Sessions Court and now the charge has been framed. Besides, the complainant has already been examined as well as cross-examined. According to the prosecution there are about 23 witnesses and the prosecution is confident that if the trial proceeds on day-to-day basis, all these witnesses can be examined in period not exceeding one month. This hope of the prosecution may not be accepted in toto. Even so, the fact remains that the trial has commenced and

one main witness has already been examined and cross-examined.

5. The Trial Court will proceed to examine the other witnesses and proceed with the trial on day-to-day basis so as to ensure expeditious disposal of the trial, hopefully by end of July 2006. Viewed in this perspective, there is no reason to entertain the second bail application. Hence, rejected.

A.M.KHANWILKAR, J.